

ANNUAL REPORT  
PANEL OF MEDIATORS  
Fiscal Year 1998

The following report is submitted pursuant to 26 M.R.S.A. § 965(2)(E) (1988).

The number of new mediation requests received this fiscal year was slightly lower than that for the preceding year; there were 68 new requests compared with 74 in FY 1997 and 69 in FY 1996. During the last fifteen years, the number of new filings per year ranged from a low of 69 in FY 1997 to the record high figure--120 filings--in FY 1987. In addition to the new mediation requests received during the fiscal year just ended, there were 36 matters carried over from FY 1997 that required some form of mediation activity during the year. Last year, 37 matters were carried over from FY 1996. Thus, the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 104, down from 111 during the previous fiscal year. Anecdotal evidence from members of the labor-management community, together with the demonstrated demand for the Panel's services, establishes that such demand is essentially unaffected by the introduction of user fees during FY 1992. In the uncertain economy of recent years, most parties negotiated only one-year agreements, hoping that the situation would stabilize or improve sufficiently the next year to permit more productive negotiations at that time. Beginning about the middle of calendar year 1994, parties began returning to the practice of negotiating multi-year agreements, thereby reducing the number of agreements which expired this year. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for the Panel's services this year. The marginal decline in such demand this year reflects more significant factors affecting the bargaining process--improvement in the regional economy and increased state aid to education.

It should be noted that a mediation is recorded as a single request, even though it involves multiple bargaining units of a single employer. In such situations, the mediator undoubtedly expends substantial periods of time on issues particular to individual bargaining units, making the mediation process a long and complicated one. Thus, the number of mediation requests filed is not a completely accurate reflection of the Panel's actual work load.

The following table reflects the Panel's rate of success over the past several years:

Fiscal Year	Settlement Rate
1984	71%
1985	82%
1986	75%
1987	77%
1988	81%
1989	78%
1990	79%
1991	78%
1992	74%
1993	68.5%
1994	75.2%
1995	50%
1996	66.2%
1997	82.1%
1998	82.3%

The Panel's settlement rate continued the upward trend begun in FY 1996. In FY 1997, we attributed the improved settlement climate that year as being reflective of the availability of additional resources for settlement of agreements and to a lag between employee expectations and the easing of resources combining to make settlements easier to achieve. Anecdotal evidence from Panel members indicates that, this year, the continued improvement in the regional economy and the availability of even more resources for the settlement of agreements has resulted in a shift in the focus of bargaining disputes encountered this year.

Over the past several bargaining cycles, the most difficult issues in Maine public sector negotiations were those with fiscal impact, especially wages and health insurance financing. In the K-12 education and municipal sectors this year, there is far less emphasis on financial issues and increased focus on language issues. Wage settlements continued to be in the 3% range. By and large, health insurance matters (including the identity of the carrier, the level of coverage, and premium sharing) were not major issues in municipal sector bargaining, primarily because the principle of premium-sharing and the relative percentages of contribution were established in earlier rounds of negotiations. Again this year, the high settlement rate reflects continued utilization of the non-confrontational preventative mediation technique, which resulted in a 100% settlement rate again this year.

(13 cases, 11 completed, 11 settlements, 2 cases carried forward).

Since both new filings and cases carried over from prior years contributed to the actual work load of the Panel in the course of the 12-month period, we have reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period. The above settlement rate only includes matters where settlement was achieved by the parties with the active involvement of one or more Panel members. Although parties who reach agreement after conclusion of the formal mediation process often credit the mediator's efforts as having been instrumental in resolving the dispute, the degree to which mediation contributed to the settlement is too speculative for such cases to constitute settlements for reporting purposes. Likewise, cases in which a request for mediation was filed but in which the parties settled their differences prior to participating in mediation are not included in the settlement rate.

The distribution of the Panel's caseload, according to the statute pursuant to which referrals were made over the last several years, is as follows:

Fiscal Year	New Cases Referred	Cases Referred Under State, University and Judicial Acts	Cases Referred Under Municipal Act, inc. County and Turnpike Authority Referrals	Private Sector Referrals	Agricultural Marketing Act
1984	72	3	68	1	--
1985	85	1	81	3	--
1986	98	3	93	2	--
1987	120	3	113	4	--
1988	91	6	81	1	3
1989	107	5	100	0	2
1990	115	6	106	1	2
1991	89	1	86	2	0
1992	94	3	90	1	0
1993	115	4	109	0	2
1994	114	4	109	0	1
1995	77	9	67	0	1
1996	69	5	64	0	0
1997	74	12	60	2	0
1998	68	2	66	0	0

The 68 requests for services received this year involved the following employee organizations:

Maine Education Association/NEA <sup>1</sup>	38 requests
Teamsters Union Local 340	18
AFSCME Council 93	4
International Association of Firefighters	4
Maine State Employees Association	2
Town of Topsham Employee Association	1
Maine Association of Police	1

The average number of mediation days per case decreased from 3.76 in FY 1997 to 2.83 for the combined total of 68 matters, including carryovers, for which mediation was concluded. The maximum mediation days devoted to a single case this fiscal year was 16, a preventative mediation involving the Lisbon Education Association and the Lisbon School Committee for the Lisbon professional employees' unit. Two other preventative mediation cases rounded out the three cases requiring the most mediation days this year and both involved the Maine Technical College System. Twelve mediation days were required to reach successor agreements for the System's Supervisory and Support bargaining units, represented by the Maine State Employees Association, and 10 days were required for the faculty unit, represented by the Maine Education Association. While preventative mediation often requires more mediator days than does traditional mediation, the parties in the former process almost unanimously agree that the process transforms the relationship between labor and management from one characterized by mistrust and suspicion to one based on mutual respect and cooperation. For example, the Lisbon teacher negotiations have traditionally been among the most acrimonious in Maine. This year's preventative mediation effort, which extended over 6 months, resulted in a new 3-year collective bargaining agreement, compared with the 18 months of traditional bargaining and mediation required for the previous 1-year agreement. Of the 68 cases in which mediation was concluded this year, 58.8% were resolved in 2 days or less (18 cases were resolved in one day and 22 were resolved in two days). As noted in last year's report, preventative mediations require more days to complete. This is because the preventative process encourages active participation by all present, resulting in greater discussion. The mediation-days per case for all mediations completed this year was 2.84 days, with traditional mediations averaging 2.27 days per case and preventative mediations averaging

---

<sup>1</sup>While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

5.91 days per case.

The figures for the past fifteen-year period are summarized below:

Fiscal Year	Mediation-Days Expenditure Per Case
1984	1.90
1985	2.10
1986	2.43
1987	2.20
1988	2.45
1989	2.23
1990	2.52
1991	2.67
1992	2.75
1993	2.40
1994	2.51
1995	3.33
1996	3.20 (3.20)
1997	3.76 (3.25)
1998	2.84 (2.27)

In order to assist in comparing the number of mediation-days per case over a multi-year period, we have included the number of mediation-days per case in traditional mediations within parentheses in the above table for the last 3 years--years during which preventative mediation services were provided. Although such services were also provided in 1995, only 2 preventative cases were concluded that year and we were unable to break out separate meaningful statistics for traditional and preventative cases for that year.

Of the mediations, including carryovers, that were concluded in FY 1998, 14.71% proceeded to fact finding. The percentage of cases proceeding to requests for fact finding after mediation in each of the past several years is indicated below:<sup>2</sup>

---

<sup>2</sup>All fact-finding requests are included, whether later dismissed, withdrawn or settled prior to hearing. Fact-finding hearings were convened in 9 cases, the parties settled prior to fact finding in 8 cases, and 6 cases are pending.

Fiscal Year	Percentage of Cases Proceeding to Fact Finding
1984	13.4%
1985	13%
1986	16%
1987	20%
1988	17%
1989	21.5%
1990	20.73%
1991	28.81%
1992	23.8%
1993	23%
1994	23.6%
1995	25.8%
1996	30.99%
1997	15.94%
1998	14.71%

Assuming the average of 2.84 mediation-days per case, the 30 matters still pending will consume an additional 85.2 mediation-days, for a total expenditure of approximately 278.2 mediation-days devoted to matters docketed in or carried over to FY 1998.

Members of the Panel of Mediators during the past fiscal year were:

John Alfano	Biddeford
Shari Broder	Freeport
Janice Campbell	Hiram
James Carignan	Lewiston
Roberta de Araujo	Hallowell
Donald R. Hamill <sup>3</sup>	Portland
Paul Harrison	Bangor
John J. Mahon <sup>4</sup>	Camden
Nelson J. Megna <sup>5</sup>	Oakland
David Rankin	Togus
Richard Taylor	Scarborough

<sup>3</sup>Appointed December 16, 1997, to replace Janice Campbell.

<sup>4</sup>Appointed December 16, 1997, to replace Roberta de Araujo.

<sup>5</sup>Appointed December 16, 1997, to replace David Rankin.

A significant development affecting the Panel members this year was the implementation of P.L. 1997, ch. 412, An Act Amending the Compensation for Members of the Panel of Mediators, which went into effect on September 19, 1997. This measure, which was submitted by the Maine Labor Relations Board and supported by the Governor's Office, amends the compensation for State mediators in two ways: 1) rather than being allowed a per diem of \$100, regardless of the length of each mediation session or the number of sessions in a single day, mediators are now allowed to receive \$100 for up to 4 hours of mediation services and \$100 for each consecutive period of up to 4 hours thereafter and 2) the provision in Title 5 that restricted mediators to receiving one per diem per calendar day no longer applies. Mediators can now conduct two mediation sessions in the same part of the State in a single day, dividing the travel and other costs among 4, rather than 2, parties, thereby reducing mediator travel and the costs paid by each party. Since the members' per diem and expenses are funded through user fees, the fact that the bill was supported by both labor and management indicates the value our clients place on the Panel's services.

Since the amended compensation system has only been in effect for 9 months, it may be too early to measure its long-term impact on demand for mediation services, especially given the significant influence of external factors thereon. Three observations of the short-term experience are notable: 1) while it is impossible to determine whether the higher user fees deterred potential users, the overall demand for services has remained within the range of fluctuation experienced in the last 5 years; 2) the number of mediation-days-per-case has dropped significantly, indicating the parties may be more aware of the cost of the service and are using the service more efficiently, and 3) in a number of instances this year, mediators have conducted two separate mediation sessions in a single day, resulting in lower unit costs for the parties.

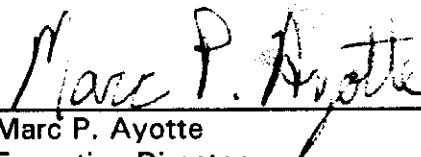
This year, in conjunction with the New England Consortium of State Labor Relations Agencies, the members of the Panel were offered a training program in mediation techniques and issues. Among the topics included in the program were: improved communications techniques with a focus on gender-based communications differences, grievance mediation, the use of the Internet for labor relations research, interest based

bargaining, information technology applications in negotiations and mediation (using data bases and spreadsheets), and dealing with difficult people. While all of the members of the Panel have extensive negotiations and dispute resolution experience, the opportunity to meet with and discuss issues of mutual interest and concern with neutral colleagues from New England and New York was greatly appreciated by the members who were able to attend.

The mediation process continues to be the cornerstone of the dispute resolution process in Maine. Practitioners in the public sector labor relations community have come to accept and value the process and the expertise and competence of members of the Panel. The members of the Panel have gained practical experience and insights that are invaluable in the effective use of this tool. The Panel's reputation and expertise, coupled with a growing awareness of alternative dispute resolution in our society, are likely to result in even greater demand for the Panels' services in the future.

Dated at Augusta, Maine, this 1st day of July, 1998.

Respectfully submitted,

A handwritten signature in dark ink, reading "Marc P. Ayotte", is written over a horizontal line.

Marc P. Ayotte  
Executive Director  
Panel of Mediators and  
Maine Labor Relations Board